

STATE OF MICHIGAN
COURT OF APPEALS

JOHN WOLF and DARLENE WOLF,

Plaintiffs-Appellants,

v

HOMEcomings FINANCIAL NETWORK,
INC.,

Defendant-Appellee.

UNPUBLISHED
December 19, 2006

No. 270169
Jackson Circuit Court
LC No. 06-000036-CH

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the grant of summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), in this foreclosure action. We affirm.

Plaintiffs' residential mortgage went into default and was sold at a sheriff's sale by defendant on September 15, 2004. Defendant was also the purchaser of the property at the sheriff's sale. The sheriff's deed was recorded on September 28, 2004, and provided for a 12-month redemption period, to expire on September 15, 2005, in accordance with MCL 600.3240(12). Plaintiffs contend their inability to redeem the property, within the statutory time frame, was solely attributable to the failure of defendant to cooperate following plaintiffs' repeated requests for a firm redemption figure. Defendant asserts it had no statutory or common law duty to provide this information to plaintiffs and that the sheriff's deed contained all of the necessary figures for plaintiffs to calculate the redemption amount.

On March 30, 2005, during the pendency of the redemption period for the property, 2004 PA 538 became effective, amending the provisions of MCL 600.3240. Specifically, plaintiffs cite to the revised language of MCL 600.3240(2), which states:

The amount to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser . . . and an additional \$5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including

any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

Plaintiffs assert, despite receiving confirmation of their eligibility to procure financing for a new mortgage loan sufficient to redeem the subject property, that defendant and its agent failed to respond to repeated requests to provide a firm redemption payoff amount. Although plaintiffs do not assert that defendant was required to submit an affidavit, in accordance with MCL 600.3240(2), based on the sale of the property occurring before enactment of the statutory revision, they do contend that defendant violated its statutory and common law duties to cooperate in redemption of the property, arguing that the statutory duty to cooperate by supplying reliable and conclusive redemption figures was in effect five months before expiration of the redemption period. The trial court, identifying the lack of an issue of material fact, granted summary disposition after determining the absence of a legal obligation “on the defendant to come up with the amount.” We review de novo a trial court's decision whether to grant equitable relief, but we review the trial court's findings of fact for clear error. *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). This Court also reviews a trial court's determination regarding a motion for summary disposition de novo. *MacDonald v PKT, Inc.*, 464 Mich 322, 332; 628 NW2d 33 (2001). This issue also involves a question of statutory interpretation which we review de novo. *Shinholster v Annapolis Hosp.*, 471 Mich 540, 548; 685 NW2d 275 (2004).

In determining whether a statute should be applied retroactively or prospectively, the intent of the Legislature controls. *Frank W Lynch & Co v Flex Technologies, Inc.*, 463 Mich 578, 583; 624 NW2d 180 (2001) (citation omitted). “[S]tatutes are presumed to operate prospectively unless the contrary intent is clearly manifested.” *Lynch, supra* at 583 (citation omitted). The general rule of prospectivity is not applicable to statutes or amendments that are remedial or procedural, i.e., designed to correct an existing oversight in the law or redress an existing grievance, or are intended to reform or extend existing rights. *Macomb Co Professional Deputies Ass'n v Macomb Co*, 182 Mich App 724, 730, 452 NW2d 902 (1990). However, there is a “strong presumption against the retroactive application of statutes in the absence of a clear expression by the Legislature that the act be so applied.” *Lynch, supra* at 588. Because there is an “absence of a clear expression by the Legislature” that the amended language of MCL 600.3240 be retroactively applied, we conclude that the statutory revisions were not applicable to defendant retroactively. *Id.*

Although acknowledging defendant was not obligated to provide an affidavit in accordance with MCL 600.3240(2), plaintiffs still assert the imposition of both a statutory and common law duty on defendant to cooperate and assist plaintiffs in the determination of an accurate redemption price. However, if defendant is not required to submit an affidavit in accordance with the revised language of MCL 600.3240(2), a reading of the amended language does not impose on defendant an obligation to assist an individual seeking to redeem property to compute a redemption price. Specifically, the statutory language provides, in relevant part:

The purchaser *may* include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. [MCL 600.3240(2) (emphasis added).]

The statutory language includes the term “may,” which has historically been interpreted to be discretionary, as opposed to the term “shall,” which is universally recognized as requiring mandatory adherence. *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 657; 708 NW2d 740 (2005), rev pending 474 Mich 1103 (2006) (citation omitted). Thus, plaintiffs’ contention that a statutory mandate exists requiring defendant’s responsibility for the calculation of redemption amounts is not supported by a review of the relevant statutory provision. Further, within the statutory revision, the only requirements imposed for the affidavit are that “the exact amount required to redeem the property . . . including any daily per diem amounts, and the date by which the property must be redeemed.” MCL 600.3240(2). As argued by defendant, all of this information, or the means to calculate it, are contained within the sheriff’s deed of sale and were accessible for plaintiffs’ use during the full period of redemption.

Importantly, plaintiffs assert only a lack of cooperation by defendant, not fraud. In general, MCL 600.3240 provides the requirements for redemption and that equitable factors are not to be considered in the absence of fraud, accident or mistake. *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 55; 503 NW2d 639 (1993). A statutory right to redemption of property is not to be expanded by the courts without some unusual circumstances or additional considerations not within the contemplation of the statute. *Id.* at 54; see also *Flynn v Korneffel*, 451 Mich 186, 199; 547 NW2d 249 (1996). “Any deviation from the literal requirements of the statute ‘must be addressed to the conscience of the court.’” *Senters, supra* at 54, quoting *Grossman Bldg Co v Elliott*, 382 Mich 596, 603; 171 NW2d 441 (1969).

Foreclosure sales of property are regulated by statute. MCL 600.3201. To redeem property from a foreclosure sale in accordance with the plain language and meaning of MCL 600.3240, a plaintiff must pay the bid price plus interest and any additional amounts paid by the purchaser for taxes, insurance and specified fees. MCL 600.3240. Early decisions by the Michigan Supreme Court “strictly construed the redemption statute, precluding deviation from its terms despite equitable considerations.” *Senters, supra* at 50-51 (footnote omitted). The Court has stated:

Where a valid legislative act has determined the conditions on which rights shall vest or be forfeited, and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute This principle has not been open to controversy, and is familiar and elementary. [*Carlisle v Dunlap*, 203 Mich 602, 606; 169 NW 936 (1918); see also *Heimerdinger v Heimerdinger*, 299 Mich 149, 154; 299 NW 844 (1941).]

Although plaintiffs claim they were approved by a lender to receive funds sufficient to effectuate the redemption, such monies were never tendered to defendant. A redemption is deemed to be “complete when one having the right to redeem pays in a proper time, to a proper person.” *Grossman, supra* at 603. “Tender must . . . be without qualification or condition.” *Flynn, supra* at 204. In this instance, plaintiffs did not even attempt to remit payment. Hence, there is no

basis or justification for the intervention of equity by this Court to extend the statutory redemption period.

Further, plaintiffs imply that, given the revised language of the statute prohibiting the register of deeds from calculating a redemption figure, the onus was on defendant to cooperate and provide plaintiffs with an accurate number. In support of this contention, plaintiffs' submitted the affidavit of the local register of deeds. However, the affidavit fails to support plaintiffs' assertion because the register of deeds indicated she had not provided redemption calculations for a period of at least five years, encompassing a time period before revision of the statutory language. As such, before revision of the statute, the register of deeds' affidavit demonstrates that plaintiffs had to routinely pursue or determine redemption figures by means other than the sheriff sale purchaser or the register of deeds.

Plaintiffs, in support of their contention that a common-law duty exists necessitating defendant's cooperation with the redemption exists, rely on an unpublished case by this Court.¹ This case has no precedential value in accordance with MCR 7.215(C)(1) and is easily factually distinguishable. In addition, in plaintiffs' supplemental brief on appeal, they assert that defendant had implemented the use of affidavits in accordance with the revised provisions of MCL 600.3240, in other redemptions, which occurred closer in temporal proximity to effectuation of the statutory revisions. Plaintiffs suggest the omission of this information by defendant's counsel at the motion for summary disposition constituted a misrepresentation to the trial court of its acknowledged obligation to comply with the revised provisions of MCL 600.3240. Notably, plaintiffs assert these documents comprised newly discovered information and, hence, were not submitted at the motion for summary disposition. The purported evidence plaintiffs cite to support their position was not contained in the lower court record. Expansions of the record may not be considered on appeal. MCR 7.210(A)(1); *Miller v Purcell*, 246 Mich App 244, 249 n 1; 631 NW2d 760 (2001). In addition, plaintiffs fail to cite to any law in support of this rather convoluted argument. Plaintiffs may not simply announce their position and leave it to this Court to search for authority to support it. *City of Mt Pleasant v State Tax Comm*, 267 Mich App 1, 6; 703 NW2d 227 (2005), app grtd in part 474 Mich 1001 (2006). Thus, plaintiffs' have not substantiated any entitlement to equitable intervention by this Court.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ *Hodge v Ulmer*, unpublished opinion per curiam of the Court of Appeals, issued October 31, 1997 (Docket No. 194439).